SHELTON — FIVER INTERSTATE JUDICIAL RELATIONS

"Fixed Interstate Judicial Relations"

Address of

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Chairman of Committee on Uniform Judicial Procedure

of the

American Bar Association

Before the

Minnesota State Bar Association

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It is my great honor this morning to consider with you the subject of judicial procedure and its modernization. If I speak plainly it is because of the desire to convey a truth. Having many times discussed its vital relation to government and to commerce, to civil liberty and to property rights; having shown by example and authority that it reflects the very genius of government itself; having pictured it as the keystone of the arch supporting, on either side, the Executive and Legislative Departments, upon which each leaned for support and that interference by either department with its sacred functions produces weakness and eventual destruction, we may profitably turn our attention to some more practical but equally philosophical matters. On other occasions there has been shown the attempt of Congress and Legislatures arbitrarily to stipulate by statute, in exact detail, the manner in which causes shall be instituted and conducted without discretion in the judge and the difficulties and dissatisfaction coeveal therewith. An exact knowledge of those unwelcome details may safely be left to your experience and observation in order that more attention may be given to their remedy, which is the paramount thought. Yet a perusal of the debates on the Clayton Procedure Bill (H. R. 133) before the House Committee on the Judiciary (Feb. 27th, 1914) will prove profitable.

SYMPATHY WITH COMMERCE.

Every observant man finds himself obliged to sympathize with the impatience shown by Commerce at present conditions. The disposition of men has changed but little even under the discipline of the ages. We find it set down in Amos (V-7) that there are things "that turn judgment into wormwood." Lord Bacon (Essay LVI) commented "and surely there be also that turn it into vinegar; for injustice maketh it bitter and delays make is sour." We find in Proverbs (XXX, 26) that "a righteous man falling in his cause before his adversary is as a troubled fountain and a corrupt spring." Ovid (1, i, 37) says "It is the duty of a judge to take into consideration the times as well as the circumstances of facts." I venture the opinion

that a court, the pleading and procedure of which is sufficiently technical to permit of interference with a prompt and fair joining of the issue of fact to be tried and an unhampered application of the law by the Judge, is not a court of justice, but of injustice. It lacks little of being the exemplification of

"The simple plan
That they should take who have the power
And they should keep who can."

So the men of interstate commerce have despaired of longer following the advice of Gamaliel to the Jews to await developments but, very fortunately, have accepted the program of the American Bar Association and the great trinity of agencies, engaged under its direction, looking to simplicity and uniformity and fixed interstate judicial relations. I venture the further belief that there can be no lasting judicial, juridical, commercial or political peace in the absence of a proper appreciation of the relations that should exist among the Bench, the Bar and the men of commerce. The importance of the hearty co-operation in the campaign of modernization by business men will not be underestimated.

THE PARTING OF THE WAYS.

Undoubtedly, in 1912, the Bar of America had come to the parting of the ways and realized it with a keenness seldom, if ever, evidenced in the history of jurisprudence. Commerce was determined upon action, preferably by the Bar, otherwise by itself. For the first time the Bar took the initiative. It unanimously agreed upon a scheme of reform, organized a campaign and set itself to the important task. Awakened to a keen sense of its sacred duty it demanded the right to perform it in the light of science and with the aid of history. The publicists and orators of the Bar, during the last several years, have been given to introspection, to the consideration of the lawyer's vital place in jurisprudence and organized society and to the study of certain historical weaknesses of their brethren of past generations. There has been evolved from these researches and unselfish tendencies a fixed program which is being diligently and intelligently carried into effect. This program lacks no important feature because it deals solely with a great principle. It permits of universal agreement because it involves no details but leaves those to the Supreme Appellate Courts aided by the suggestions and advice of practicing lawyers. Therefore, the Clayton Bill, to be discussed later, performs no other function than to vest in the Federal Supreme Court the sole power to make all necessary rules of procedure and practice for the trial courts and to put them into effect. This points the way to uniformity in both the federal and the state courts for reasons of both policy and profit.

THE SCIENCE AND PRACTICAL REASONS FOR UNIFORMITY.

But is this beautiful ideal and ambitious task possible? It is, and it is difficult without keen emotion for one mindful of the past history of the Bar, to contemplate the almost assured promise of success of such a splendid and comprehensive scheme. Never before in the his-

tory of the world have lawyers and judges so magnanimously put aside all pride of opinion, personal theories and individual rights and, without reference to politics, religion or State citizenship, set themselves to work to accomplish the simple but well organized program of the American Bar Association which promises the solution of a century old problem, and the beginning of a new and historical era in jurisprudence. It promises more; it will enable the Supreme Court to prepare and put into effect and subsequently to amend and perfect as necessity evidences, a complete correlated system of rules for the detail operation of the courts. The trial judge will be set free, within the sensible limitations of these rules, to exercise a sound discretion in all procedural and practice matters; it will enable, if it does not compel the judge and the lawyer to co-ordinate and co-operate in facilitating trials and in the administration of justice, instead of casting obstacles in the way, as the lawyer is now permitted and, I believe, compelled to do by statute and his oath of qualification. This means that the State will secure the benefit of the lawyer's help and sympathy in lieu of a present hostility. This attitude will develop in the Judge the highest sense of responsibility and judicial acumen and in the lawyer the keenest observance of ethical standards and an unselfish patriotic view of his noble profession. The destruction of the agencies that forced him to pick flaws in the machinery of justice will be followed by the desire to perfect the new system that he helped to create and for the perfect operation of which he will then find himself jointly responsible with the Courts. It will do away with the mystery of stilted forms and the obscurity and uncertainty of subtlety and there will be introduced directness and simplicity. With one stroke there will be cleared away the eight centuries of rubbish and debris that have been piling up before the door of the Chamber of Justice and which have prevented many a poor man from entering or else caused him to exhaust his resources in the effort.

THE BENEFICENCE OF "COURT RULES."

In a scientific, organized and well planned manner there has been evolved a modern structure, out of the proved virtues and principles of antiquity and the best practices of the day in which we live, that is so fashioned that, day by day, it can be made to fit the changing hour without the sacrifice of a single principle. It means that in the Bench and Bar, in a happy co-ordination, is to be reposed the sacred trust of guarding, perfecting and gradually improving the instruments which they are daily called upon to use in administering the laws, and they are the sole human elements entering into jurisprudence and the sole agencies properly prepared to perform the task. The Congress and the Legislatures will refrain from regulating the details of procedure and practice by rigid statutes, retaining control, however, over all fundamental and jurisdictional matters, questions of permanent procedure and of evidence. It means that the Legislative Department will tell the courts what to do but not how to do it. It means a new era in the history of jurisprudence, a new and wholesome relation of the

lawyers and judges with reference to a manifest duty concerning a technical governmental function in its relation to commerce and society; a new and wholesome attitude of the lawyers towards one another and towards the judges, and it promises a return of the old time faith in, and respect for, the judges and the lawyers. These are the things for which we are striving and which are comprehended in the American Bar Association's program. And all of these things are not only possible but assured by the foremost members of the American Bar if Congress will but set the Supreme Court free to perform its important part. May I venture to express the optimism that, just so sure as a wholesome public opinion has ever dominated legislation, so certain will Congress and the various Legislatures respond.

MARVELOUS CHANGE OF SENTIMENT.

Let me request you lawyers, so deeply absorbed in the daily routine, to look about you. Things, as time is measured, have been changing with kaleidoscopic rapidity. This country has undergone a change of sentiment within the last brief decade that, in time, will prove a marvel to all thoughtful men. More than twenty-five years ago Grover Cleveland prophetically remarked:

"To me nothing can be more deplorable than that open criticism of the decisions of Courts which, all at once, has become fashionable * * * * they are danger signals and failure to see them may introduce practices which will threaten the independence of the Courts. * * * * * If their decrees are not respected, or the judges, who preside over them are not men of the highest reputation for ability and fairness then all the forces of discontent will unite in an assault upon them."

Within ten years thereafter there was a partial fulfilment of his prophecy; within twenty years its shadow had caused the great American Bar Association to feel justified in sounding an official warning; within twenty-five years it had perfected organizations for a militant campaign of resistance and of education, and was calling the lawyers to its colors. Five years ago lawyers of national reputation, who are now most actively engaged in the campaign of modernization, looked skeptically upon the task. Today they not only predict the success of the American Bar Association's program but believe in it and believe that the great doctrine of *interstate judicial relations* is but a matter of time and education. But there have been many things to bestir them. For fifty years commerce and society have been persistently demanding relief from the expense, complexity, technicality and slowness of the procedure provided by Congress and Legislatures for the detail operation of the courts, from which they had already suffered for more than half a century. Weary of waiting, impatience has more than once threatened to strangle Justice with ill fitting expediences that but aggravated the trouble, because they resorted to the favorite plan of the despot of destroying a principle for which the Hebrews prayed, the Athenians and Romans fought and the Anglo-Saxon died and which brought our forefathers to this country—*the independence of the judiciary.*

THE COURTS THE CORNERSTONE OF GOVERNMENT.

Let all else fail, but so long as the courts stand, the country will stand, when the courts weaken or fail the government likewise will weaken or fail. The most sacred duty beckoning and calling to American manhood today is to guard the doors of the courtrooms against the entrance of political and personal ambition and all manner of wickedness under the leadership of self-serving opportunists. And, let me say to you, that any government that permits the Legislative Department, a group of individuals or one individual or any other agency, to place a hand upon the finger of the Judge when he signs a decree, is not a government of justice amongst men but it is the instrument of oppression in the hands of tyranny. Better far that this great Republic which lays its righteous claim to being the "cradle of liberty" and the "home of the free," whose settlers sought asylum here from a corrupt, servile and dependent judiciary and a technical court procedure; and whose people subsequently purchased freedom with their lives and treasure, should be wiped from the face of the earth, than that it should return to the dark days of England that made possible a "Jeffries" and the selection and maintenance of dependent and subservient judges. It is difficult for the citizens of this Republic, when in a most grateful frame of mind, to appreciate the blessings bestowed upon them by an indulgent and forgiving Providence. It is equally as difficult for us to measure up to the profound duty of maintaining these governmental agencies at the high standard of the day in which we live.

THE LAWYER'S POSITION DISCUSSED.

Yet, one must be pardoned for wondering at the absence of an earlier, organized response by the lawyers, for they did not act until the absolute necessity stared them in the face. Both the machinery of the courts and the judge were being assaulted. The time had actually come when the Bench and Bar must, or some other agency would, reform judicial procedure. It would be merely gratifying curiosity to delve into the cause of this delay. If I may be permitted to say it, the lawyer of all people, should modernize the instrumentalities of his profession and should have a keener insight into all human endeavors, aspirations and inspirations, than the followers of any other profession or effort. His highest duty is to advise and if this be properly and sincerely done he must himself have an intimate knowledge of the workings and conflicts of both public and private affairs. I venture to assert that the standing of the lawyers and judges of a country mark that nation's position in history. Brilliant soldiers, comet like, flash their destructive existence across troubled political skies and great statesmen formulate and initiate profound governmental policies, but the work of the jurist and the lawyer is interwoven with a delicate, intimate touch, into the very warp and woof of a nation's life, ever regulating the most sacred relations of her citizens It is a constructive statesmanship of the highest class and, in the order of responsibility, ranks next to the Church. What a sacred responsibility it is! A people cannot lose faith in their lawyers and judges without losing re-

spect for and refusing submission to their courts. As the courts weaken so the government will weaken and no policy can be put into effect. A strong, enterprising, philosophic and militant Bar is coincident with a strong and popular government and a contented people. This is but natural. The demands and practical details of a commercial life are too numerous and exacting to permit of the research, thought and philosophy that falls naturally to the lawyers' lot, however intellectual, educated and able may be the business man.

"And just experience tells, in every soil,
That those that think must govern those that toil."

THE TROUBLE WITH THE LAWYERS.

In a word the trouble with the lawyers, in the past, has been an inbred conservatism and caution that engendered antipathy to all change, thereby destroying or greatly reducing the prospect of progress. One would like to find an excuse for this proverbial lack of progress for it rests in temperament and not in reason. The law is a science and the administration of it is a highly technical governmental function. The preparation and qualification for it is purchased only by years of unremitting toil and personal sacrifice. This is particularly true as to a working familiarity with the subtle, technical procedure and practice prevalent in the courts, and one casts adrift that dearly bought knowledge with reluctance. Nothing but a deep and abiding love of country, or response to the call of public opinion has ever been able to tempt or to drive lawyers to agree to a change. They seemed, as a profession, to have been unable to lift their studious gaze from the machinery inherited from antiquity in order that they might see the greater and broader demands of the present. It called for change, and novelty is anathema to the lawyer.

JUDICIAL PROCEDURE AN HISTORICAL LAGGARD.

The result is, and the statement is borne out by history, that judicial procedure has always lagged behind the commerce it was created to serve and to aid, and until the year 1912 when the American Bar Association acted with a splendid unanimity never before witnessed by an admiring world, it has been the bone of contention and strife. Lawyers simply could not or would not agree upon a change or else the manner in which it should be made. The Romans, after generations of struggle, were 100 years in an organized effort to agree upon the Justinian Code, which great reform was finally accomplished by a selected Committee of five men whose work, by royal decree, was ordained to be final only when the Committee was unanimous. It was the only way in which it could have been accomplished and the Justinian Code proved to be the distinguishing feature of the first half of the sixth century of the Christian era. The lawyers of England erected the Inns of Court and labored and debated for more than eight centuries, during a part of which time, from 1827 to about 1843, they had the active assistance of the learned Stephen, whose work on "Pleading" is a great philosophical book. It was always a question

of form. They professed to believe they were improving and called it the evolution of the science of pleading and practice, a deadly parallel to which is our own much complicated Federal procedure.

ENGLAND'S JURIDICAL REVOLUTION IN 1873.

As a matter of fact nothing, but a few amendments and a few more technical forms, was accomplished and so we find the public ripe for the adoption of Lord Shelburne's plan of 1873 that arbitrarily removed from the jurisprudence of England the whole miserable thing; that abolished all forms and statutory procedure and allowed the courts to make elastic and correlated rules. This marked a new era in English jurisprudence, the most radical and the most scientific possible. At one stroke, it did away with Legislative interference; with contention amongst the lawyers and, most important of all, it swept away all manner of mystery in court procedure by abolishing obsolete expressions, technical forms, subtle theories and verbose description. It went directly to the issue to be tried without circumlocution. Without the sacrifice of a single principle of the common law, it put pleading and procedure on the level of common sense and gave it a respectable standing with business men, a thing that John Milton in caustic words ventured to predict would never happen among Anglo-Saxon people.

SIMPLICITY A CONDITION TO CONFIDENCE.

This inspires the comment that no agency of a representative government that fails to touch the popular life; that shrouds its workings in mystery; or that renders doubtful its ends by subtlety or technicality, can perform its normal functions or command the requisite popular respect and individual submission. This means it cannot live, though it may oppress and burden the people for half a century or more because of ignorance of the way in which to rid themselves of the incubus. Directness and simplicity are the keynote of republican forms of government as they are the basis of manly character, the watchwords of commerce, and conditions precedent to the usefulness of every governmental function and human relation.

MYSTERY PREVALENT IN JURISPRUDENCE.

The abolition of the use of Latin in the pleading and procedure of the English courts is an example of early resentment to mystery in the courts. As early as 1360 pleas were required to be written in English but in 1609 James I. wholly abolished it, saying: "I wish the law written in one vulgar language; for now it is an old, mixt and corrupt language only understood by the lawyers." It is an interesting coincidence that King James I. should have been inspired to express that sentiment at the time of the announcement of the publication of the Revised Version of the Bible. William Duane of Philadelphia, who will be remembered as the editor of the "Aurora" and who was tried in 1799 for a breach of the "Alien and Sedition Act," spoke some wholesome truths at the same time he committed many indiscretions. He inveighed against both the Church and the Bar for their inclination to

mystery. He pointed out that the Bible had been printed in a strange language in England, and that by "farrago of finesse and intricacy and abstruseness" "the lawyers had brought the science of law into ill repute and suspicion." He pointed out that this policy could survive only with the ignorant, and that wholesome, clear-minded, deep-breathing, liberty loving Americans could not long be led in the devious roads of ignorance and mystery. Faith and patriotism cannot so sweetly sooth the curiosity or dull the natural and national sensibilities that an intelligent man will permit another to do all his thinking, whether right or wrong. He argued that our forefathers had fled from the tinselled pomp, mysterious mutterings and obscure deliverances of ancient England to the freedom and frankness of American institutions of their own devising and there was not wanted any of its livery in our courts.

COKE AND KENT GIVE OPPOSING REASONS FOR IT.

Coke, in the preface to the third volume of his Reports, viewed it in the interest of the public weal. He commented that all law books had been written in Norman, French or Latin because "It was not thought fit nor convenient to publish either those or any of the statutes enacted in these days in the vulgar tongue, lest the unlearned, by bare reading without understanding, might suck out errors and trusting to their own conceit might endanger themselves and sometimes fall into destruction." Chancellor Kent, however, was more selfish and confessed that he made use of the *Corpus Juris* because the Bench and Bar of his day were unfamiliar with the French and the Civil law and therefore, "I could generally put my brethren to rout and carry my point by my mysterious wand of French and Civil law." This was a bad example if an honest confession, and it is set down here that it may be seen that the greatest lawyers were not above capitalizing mystery.

A MORE SORDID VIEW.

Samuel L. Knapp, an interesting observer and writer of his day (1821), (Biographical Sketches of Great Lawyers and Statesmen) in speaking of the attitude of the lawyer to the public in 1774 spoke bluntly of the effort to commercialize mystery and said:

"It would have been in vain for any one man to have attempted a reformation, for most practitioners at that period would have united against a change, from the mistaken idea that business depended on *giving an air of mystery to the proceedings* of the profession, forgetting that no science, however difficult to *attain, has any mystery in its furthest researches or in its remotest principles.* It can hardly be believed at this day, but it is a fact, that many old lawyers, who were in full practice when Blackstone's Commentaries first appeared in the country, were frequently heard to regret and complain that he should have so simplified and arranged his subject, and so clearly explained the principles of law, that the same amount of knowledge, which had cost them many years to collect, might be obtained in a short time."

In the light of the present frank and wholesome attitude of the Bar to the public, and the co-operative spirit displayed by the largest commercial organizations, one feels at liberty to cite these instances because they serve to illustrate what I venture to believe to be a past improper attitude of lawyers to laymen and particularly to an intelligent commerce. Mr. Knapp spoke a profound truth in saying that "No science, however difficult to attain, has any mystery in its farthest researches or its remotest principles," and I venture to add, that there is no necessity for any in their enforcement. May it not be possible, as Lord Coke intimated, that mystery in court procedure and in professional conduct may also be a cloak, hiding the sneaking form of ignorance because "the unlearned, * * * * * have sucked out errors, have trusted to their own conceit, * * * * * " and find their only protection in technicality, subtlety or obscurity in attack or defense. One cannot believe that in this day, there are any who would deliberately commercialize the noble profession by veiling in mystery and all manner of technical form, the enforcement of the great principles that have been the light of the world, the hope of civilization and the assurance of Christianity since the dawn of creation. The trend of the day in jurisprudence is to the wholesome atmosphere of simplicity and directness the only lasting inspiration of faith, respect and love on the part of the individual, submission to governmental restraint and the elimination of the personal equation, that makes possible the general welfare. The opinion appears justified that the real plague that distempered the whole body politic and lay at the root of the lawyers' trouble was lack of organization and fraternization, an evil, I may divert to remark, that the Bar Associations have happily remedied. They initiated nothing as a great, organized profession and found themselves unable to agree to the proposals of the politicians who were spurred to action by the very indifference and reactionary methods of the lawyers. The appeal was mistakingly, if successfully made to the legislator and not to the lawyer, and there soon fell upon and vexed the earth a system of inelastic, unscientific "Codes" not one of which has survived in any semblance of its original form. The manifest lesson taught is that the Judges and lawyers must feel obliged to cause themselves to be put into position to keep pace with the stride set by their fellows engaged in a great and growing commerce, or else submit to an inevitable public censure and the humiliating spectacle of observing its house kept in order by the Legislative Department. Bar Associations are the greatest possible agencies for promoting the general welfare and so long as they thrive there can never be a repetition of past derelictions. It is most painful to confess that the records of history do not make unnecessary, though highly illogical, the usurpation of judicial powers and duties by the Legislative Department of which complaint is now so justly made. The Bench and the Bar in yester-years sowed the wind of indifference and a lack of co-operative progress and in due course have reaped the whirlwind of legislative

guardianship and a weakened public confidence. The polar star that should guide this generation is the restoration of public confidence in the Bar, and all else will follow

"For freedom's battle once begun,
Bequeathed from bleeding sire to son,
Though baffled oft, is ever won."

THE PERIOD OF INVESTIGATION, EDUCATION AND LEGISLATION.

But what of the campaign? Every great reform intimately affecting daily intercourse or commerce must undergo the three stages of *investigation*, *education* and *legislation*. Manifestly, reform means change and change involves inconvenience if not hardship for some individuals. Mindful of these practical influences there were lawyers who looked skeptically upon the realization of the far reaching reform leading to interstate uniform judicial relations and, while applauding the thought, felt restrained by the labor imposed. But there were men ready and prepared to undertake it as a duty to their people. The result is that we have lived to see the lawyers and the men of commerce investigate, then help to educate and finally demand of the Congress that it legislate. Thus two stages of the evolution have happily been completed and it but awaits the action of Congress. Men like Elihu Root, Alton B. Parker, William Howard Taft and James C. McReynolds; teachers like Roscoe Pound of Harvard, Henry Wade Rogers of Yale, William M. Lile of the Virginia University and William R. Vance of Minnesota; famous and experienced practitioners like Jacob M. Dickinson of Chicago, Frederick W. Lehman of St. Louis, Frank B. Kellogg of Minnesota and many others, are leading the way that others may see their good work and profit by their example. Great organizations like the National Credit Men's Association, the Commercial Law League of America, the National Civic Federation, the Southern Commercial Congress, the Chamber of Commerce of the United States and many others have appointed Committees to forward the organized propaganda, and success but awaits upon the campaign before Congress that is calling to the individual lawyers.

IDEAL OF INTERSTATE UNIFORMITY OLD AS THE COLONIES.

But, some one has said that there is being promoted a novel thought in the advocacy of uniformity of decision and uniformity in procedure and that the idea of uniformity in State statutes originated with the organization of the conference of Commissioners on Uniform State Laws. The American Bar Association claims no such honor. As a matter of fact the ideal is as old as governments on this continent and was advocated in England just prior thereto. In the year 1764, Thomas Pownall, described as "late Gov., Capt. Gen., Commander in Chief and Vice Admiral of his Majesty's Provinces, Massachusetts Bay and South Carolina" and then Governor of New Jersey, said: (The Administration of the British Colonies, by T. Pownall, 1764).

"I cannot in one view better describe the defects of the provincial courts in these infant governments than by that very description which my Lord Chief Justice Hale gives of our County courts in the infancy of

our own government; wherein he mentions, First, the ignorance of the judges, who were the freeholders of the country. Secondly, that these various courts bred variety of law, especially in the several counties; for, the decisions or judgments being made by divers courts and several independent judges and judiciaries who had no common interest among them in their several judicatories, thereby in process of time every several county would have several laws customs, rules and forms of proceedings."

This seems to be the first authentic appeal for fixed interstate or rather intercolonial judicial relations. It is most encouraging to the disciples of that wholesome philosophy who strive in the year 1914 to find it advocated in the very dawn of governmental relations in America and in the age of the keenest strife in England's legal history, for she underwent exactly the same evolution. It is most reassuring that such a great and profound jurist as Sir Matthew Hale should have observed the identical difficulty in England's jurisprudence and set about correcting it against an indifferent if not a hostile public opinion. In 1653 Sir Matthew was made Chairman of what appears to have been the first official Committee on Law Reform organized by the Anglo-Saxon people, if there be omitted the group of soldiers and Barons who officiated at the sealing of Magna Charta. (Campbell's Lives of the Chief Justices.) Associated with him were Cromwell, Sir Algernon Sydney and Sir Anthony Ashley Cooper, names that have become by-words in history. As a comparative study it will serve a purpose to point out that the obstinate English mind chose to view many recommendations as innovations instead of a common sense application of ancient principles. They went to the extreme of rejecting the registry of deeds which was already in vogue in the colonies. Yet those same people completely revolutionized their court procedure in 1873 and co-ordinated their courts while the American States, with two exceptions, (New Hampshire and Connecticut) are a century behind and instead of harmonizing State procedure and decisions have gone to the other extreme. Each State Supreme Appellate Court seems to find a peculiar pride in pointing out where it cannot agree with its learned brethren of another state. How timely then, is the American Bar Association's program.

THE IDEAL OF INTERSTATE UNIFORMITY.

I yield to no man in a faithful allegiance to state rights as they were learned at the feet of that profound constitutional scholar, John Randolph Tucker of Virginia, but I am not insensible of the manifest obligation of the individual states, like members of a family, to surrender private opinion and even rights in the interest of the general welfare. My idea of the union of states, in their interstate commercial relations, is that of the three musketeers—"one for all and all for one." It is that taught by Esop's fable of the bundle of sticks—fastened together they are unbreakable but separated they are easy prey. Let us weld them closer together by the co-ordination and co-operation that will follow this ideal of uniformity in all general matters. Indeed, no State can live unto itself if it would and no state Supreme Appellate

Court can do so with profit to itself and to the people it serves and probably without harm to those it serves. The greatest benefit of a broad, neighborly and liberal judicial attitude towards their brethren of other jurisdictions will necessarily inure to the advantage and very practical assistance of the men of commerce of one's own State; it will encourage industrial activity, create common ties and dissipate local conceit and selfish pride of opinion as to matters of interstate importance and not purely local in effect.

INTERSTATE COMMERCIAL RELATIONS DEMAND INTERSTATE JUDICIAL RELATIONS.

Commerce has long since wiped out the imaginary lines that mark the political boundaries between the states. Obviously the State courts must keep pace with it in interstate relations in order to usefully perform their manifest functions. Otherwise, they will retard instead of aiding and will confuse instead of clarifying social and commercial relations.

NECESSITY FOR INTERSTATE JUDICIAL RELATIONS ILLUSTRATED.

The courts are to the government and to commerce what the locomotives are to the Railroads and to commerce. The railroads cannot be conducted without locomotives and governments cannot be conducted without courts. So, a great Trunk Line may connect the two oceans and traverse the wide expanse of prairies fragrant and rich with the harvest treasure; there may support it the wealth of a Croesus and direct it the genius of a James J. Hill but without locomotives, that railroad is useless and is doomed to mediocrity; with inferior ones suitable only for local service, it will never measure up to its national destiny and may eventually become an evil influence. Heckeled and retarded in each State through which it passes by a dissimilarity of laws and regulations, it cannot perform its interstate functions. Though united in name and passing as a Trunk Line, it is really local in operation and effect. This applies with equal force to the Nation of States. It can rise no higher and be of no greater service to the Nation of States than a combination of local trains operated under differing managements and policies and no national usefulness and greatness can come of it. So, the State governments may provide the most perfect laws and entertain the best intention toward the splendid interstate commerce that the best interests of all government require shall be fostered and encouraged, yet the potency and dignity of those laws are measured exactly as they are administered to the people through the agency of the courts. If these State decisions lack uniformity and their diverse procedure and practice burden and hamper business projected or invited into or through a State, or if justice is interrupted by local traditions or influences or technicality or subtlety in any state, a feeling of hostility towards the courts of that State will surely follow and they cannot be of the greatest service. Another thought arises. It need but be said to you that, in the event of a struggle between commerce and the courts, commerce will prevail because the courts are but one of its agents though they likewise enjoy the dignity

of being governmental agencies. How unwise and unprofitable it would be, then, to struggle against its reasonable request for uniformity of law that has become so essential during this twentieth century. Commerce is the life blood of any country, and the only measure of its prosperity and success, and the government that best maintains it is best.

THE TRINITY OF AGENCIES STRIVING FOR UNIFORMITY.

Mindful of these things it is with interest that one observes the organization and workings of three great civic agencies looking to *uniformity in statute. uniformity in procedure,* and *uniformity in decision,* all under the control of the American Bar Association. They are the "Conference of Commissioners on Uniform State Laws," the "Committee on Uniform Judicial Procedure" and the "Interstate Conference of Judges."

(1) COMMISSIONERS ON UNIFORM STATE LAWS.

It was nearly a quarter of a century ago that certain unselfish and thoughtful lawyers saw the necessity of harmonizing conflicting State Statutes that were vexing and retarding interstate commerce and organized the Conference of Commisioners on Uniform State Laws for that purpose. They have lived to see their uniform negotiable instrument law adopted in forty-one states, and many other uniform statutes well on the way to universal popularity. The Warehouse Receipt Act is in effect in twenty-two states and the "Sales Act" in ten. Within a decade every law affecting interstate relations will probably be made uniform in all the States, for interstate commerce is militantly supporting these lawyers. We have come to accept their work as a matter of fact, but it is difficult to measure the obligation of commerce and the country to these great jurists and public spirited men, and the ideal inspiring them. But, the thing that interests us is that there is a completed and earnest organization that is always at work. These things evidence the passing of the days of investigation and education, for the Conference of Commissioners are preparing the legislation. The present Chairman of the Uniform Commissioners is Hon. Charles Thaddeus Terry of New York.

(2) COMMITTEE ON UNIFORM JUDICIAL PROCEDURE.

But, there is another and equally unreasonable impediment to fixed interstate judicial relations. It is a diversified court procedure. The same system of pleading and procedure is not in vogue in any two states. As a matter of fact it is just as reasonable for the States to adopt differing languages as to adopt differing court procedure, and I challenge any sensible reason to the contrary. One dislikes to attribute this condition to bigotry, and until 1913 the Old Dominion has been the worst offender, but, if possible, let us lay it to evolution. Let us assume that the thirteen colonies commenced with the technical common law pleading of England, and gradually altered it by statutes until it reached its present complication of patchwork of unrelated

statutes; or, endurance having reached a limit, the whole miserable thing was destroyed and the inflexible, unscientific Code of statutory regulations was substituted. Let us imagine that interstate commerce, the most important feature of industry, was wholly ignored and that every Legislature, at the suggestion of some individual, made alterations from time to time and one will have an idea of the voluminous crazy-quilt that the great state of New York is now in the act of abolishing as it adopts the single principle endorsed and advocated by the American Bar Association. This is the principle of the CLAYTON PROCEDURE BILL (H. R. 133) now pending in Congress.

In the simplest possible language this bill vests in the Supreme Court of the United States the power and duty to prepare, and put into effect, such a system of rules for the law side of the inferior federal courts, and improve them from time to time in the light of suggestions or complaints coming from the Bench and Bar. This system, there is every reason to believe, will appeal to the several States and will be adopted in the interest of economy and uniformity and in response to an enlightened public opinion and the urgent demand of interstate commerce.

The office of the Committee on Uniform Judicial Procedure is to bring about the enactment of the "CLAYTON PROCEDURE BILL" and to promote uniformity in the procedure of all the State courts. The Clayton Bill was unanimously recommended by the House Judiciary Committee of which Hon. Edwin Y. Webb is Chairman, and there is a promise of similar action by the Senate. The Federal Supreme Court will then put into effect the system of rules. The Committee was created in 1912 at Milwaukee, and its personnel named by that splendid lawyer and statesman, Frank B. Kellogg, then President of the American Bar Association. With your permission it is desired to take advantage of this opportunity to give expression to the appreciation felt for the patriotic and splendid support given by him and Honorable George Whitelock of Baltimore, in the organization of the Committee and of the "Conference of Judges" To them and to their broad vision is due credit for meritorious results that have been achieved and a success that could not otherwise have been attained.

(3) INTERSTATE CONFERENCE OF JUDGES.

But, as has been adverted to, after the Legislatures had adopted the letter of the uniform Statutes, many State Courts failed to live up to their wholesome spirit, and destroyed the intent of uniformity by engrafting upon the uncertain local policies, ancient customs and State traditions that had proved a source of costly annoyance and that were sought to be avoided. These jurists made a striking picture of antiquity clinging to modernity. They seemed unable to grasp the need of the great commerce of their States, that confined itself to no political boundary and which ought not to be perplexed by diversified interpretations of an identical statute, even if there were any possible reason for it. The only remedy for this blighting evil was a personal and intimate exchange of ideas and views in friendly debates between the

members of different State Appellate courts, a sort of friendly talk over the back fences, as it were. By some manner of means, other than by law, conflict of interpretation must cease. Otherwise there is a possibility and, maybe, a necessity that national regulation will be extended in some way in an effort to relieve interstate commerce of this unnecessary and vexing burden. Viewed in the light of the logical evolution of interstate commerce laws and their far-reaching influence upon the relations between the states, this condition, that some of us would count a peril, will grow as a possibility well worthy of your consideration. All law is evolution and the source is never difficult of ascertainment. A conference of state judges was, then, the only hope. I thank God for the sublime faith in mankind and in the Judiciary of this country that inspired the personal labor of education and organization extending over several years, that made possible that historic meeting at Montreal on August 30, 1913, the first conference of judges ever held in the history of the United States, and with which every man should become familiar. It means, in plain language, that the Chief Justice of the Supreme Appellate Courts and the Senior Circuit Judges of the Federal Circuits or their alternates, did enter a conference to which they were invited, the very first Conference of Judges held in the history of the United States, and there followed and grew out of it a permanent organization, officially known as the "Judicial Section" of the American Bar Association. Every future year they will convene as a feature of the Annual Convention of the American Bar Association, to confer over and do away with the conflicts of opinions that have been hindering and perplexing commerce and society. This conference, looking to fixed interstate judicial relations, will take its place in history as permanent and lasting as the conference held at Mount Vernon and which brought about fixed interstate commercial relations. They both arose out of that splendid, unselfish and far-seeing public spirit of which we spoke in the beginning, and they both reflect a patriotism that has caused men to yield up their lives in time of war, and their services and treasure in time of peace, in the interest of the general welfare of a country, the scheme of the government of which has no equal, and the guarantee of whose perpetuation is but an intelligent progress in its detailed machinery so that it may fit the changing hour. Interstate commercial relations are forced by a rule of the organic law, but interstate judicial relations will be guaranteed by a patriotic and broad public spirit the wholesome policy of which, in all interstate matters, will be a co-ordination and co-operation that will insure uniformity, encourage commerce and strengthen every governmental relation. The chairman of the conference of Judges is Hon. Orrin N. Carter of Chicago.

CONGRESS AND LEGISLATURES MUST ACT.

But, while it is useful and, I hope, interesting to pursue these historic, constructive and philosophic thoughts conducive to a wholehearted effort, the time for procuring practical legislative results has arrived. What more sacred labor could fall to the lot of any profession

or group of men, than the profound duty of reinstating in the hearts of the people the old-time faith, veneration and respect for the Bench and Bar; and there is none of graver import in governmental and commercial relations. The great political parties recently set the country agog in a death struggle over the tariff and finance, but the people continue to sit supinely by while their juridical conditions, which are the only guarantee of the operation and the permanency of either, amaze the civilized world and are bringing the country to the verge of serious discontent. Congress has thrown wide open its doors to every call, and is filling the statute books with laws without end that obviously are additional burdens for the courts to bear, but it is deaf to the unanimous appeal for relief of the American Bar Association and other organizations of great lawyers and business men. This policy is weakening the faith of the people in, and respect for, the courts; it is bringing contumely upon the lawyers and depriving them of much of the old time love, trust and intimate association with the laity, and is taking from them the good name which has been the chief reward of the faithful lawyers for all time, for few of them have ever drawn great riches from the profession. May we not hope then that, as one man, the lawyers will whole-heartedly support the American Bar Association's program. It offers a beautiful ideal, but it affords a practical opportunity for much good, so simple of attainment and yet so far reaching in beneficent results, as to benefit almost every human endeavor. Nothing but selfish pride of opinion or a narrow provincialism can interfere. Is the worship of moss-bound tradition so fixed in our hearts; is the mystery inherited from antiquity so stupefying; or has humble subservience to legislative guardianship become so consoling as to be purchased by the surrender of inherent rights and the scorn of a disappointed people? God Almighty forbid! I believe that we have set our faces to the rising sun of a new juridical era; that we are moving on with the resistless tide of a wholesome public sentiment that knows no halting, until the Bench and Bar shall have fulfilled their high ideals.